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6 Attorneys for **Chapter 7 Trustee,**
JAMES E. SALVEN
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8 **UNITED STATES BANKRUPTCY COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 **FRESNO DIVISION**

11 * * *

12 NATHANIEL STRABLE,) Case No.: **09-16997-A-7**
13 MARIE STRABLE,)
14 Debtors.) Chapter 7
15) DC. No. KMU-2
16)
17)
18)
19)
19 _____) **TRUSTEE'S MOTION TO APPROVE**
19) **SALE OF REAL PROPERTY (11 USC §**
19) **363(f)(1)(5))**
19)
19) **Date: May 5, 2010**
19) **Time: 9:00 a.m.**
19) **Dept.: A, Courtroom 11**
19) **Judge; Honorable Whitney Rimel**

20 TRUSTEE James E. Salven ("Trustee"), by and through counsel, hereby moves this court
21 for an order granting the Trustee authority to sell the real property co-owned by debtors and third
22 party Marc E. Cassar and Deborah V. Cassar, Trustees of the MDC Trust dated November 11,
23 2003 ("Trust") as follows:

24 1. This court has jurisdiction over this matter pursuant to 28 USC § 1334(a) and 28
25 USC § 157(a). This matter is a "core" proceeding under 28 USC § 157(b)(2)(N). This motion is
26 brought pursuant to 11 USC section 363.

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1 2. The motion is based upon the information contained herein and in the points and
2 authorities and declarations of James E. Salven, and John Farhang filed concurrently herewith.

3 3. Trustee is informed and believes and thereon alleges that debtor Nathan Strable is
4 a tenant-in-common with third parties Mark E. Cassar and Deborah V. Cassar, Trustees of the
5 MDC Trust Dated November 11, 2003 ("Trust"), of real property commonly known as 1809 S.
6 Roeben Avenue, Visalia, California, APN 087-442-037 (hereinafter the "Property"). Strable and
7 Trust each own an undivided one-half interest in the Property, which consists of an approximate
8 one-half acre unimproved residential lot. Salven Declaration, para. 4; Farhang Declaration, para.
9 4; Trustee's Exhibits in Support of Motion ("Trustee's Exhibits"), Exhibit B.

10 4. Trustee is informed and believes, and thereon alleges, that other than property tax
11 and other assessments or encumbrances identified in Exhibit B, there were no recorded liens or
12 encumbrances against the property on the date Debtors' case was commenced.

13 4. Trustee alleges on information and belief that:

14 (1) Partition in kind of the property between the estate and co-owner is impracticable;
15 (2) Sale of the estate's undivided interest in such property would realize significantly
16 less for the estate than sale of such property free of the interests of such co-owners; and

17 (3) The benefit to the estate of a sale of such property free of the interests of co-
18 owners outweighs the detriment, if any, to such co-owners

19 5. Trustee is informed and believes, and alleges, that sale as sought in this motion is
20 proper under 11 U.S.C. § 363 (f)(1) and/or (5), in that California law provides for partition by
21 sale free and clear of liens through which interests in common tenancy property maybe
22 compensated monetarily.

23 6. Trustee is informed and believes that physical partition of the property either is
24 impracticable or legally impossible, such that partition by sale is authorized under California
25 law, California Code of Civil Procedures §§ 872.010-874.240 ("California Partition Law"), and
26 is necessary for Trustee's administration of the Chapter 7 estate.

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1 7. Trustee alleges that sale as set forth in the Contract submitted herewith as Exhibit
2 C is in the best interest of the estate and its creditors, and such interest outweighs any prejudice
3 against Trust. Trustee is informed and believes that the sale price of the property is fair and
4 reasonable based on the market for like properties in the area and the need for timely
5 administration of the estate. Trustee is further informed and believes that approving the sale
6 subject to better or higher bids will protect Trust for any prejudice. Trustee further alleges that
7 that the interests of Trust, Debtors and Creditors will be adequately protected by Trustee holding
8 net proceeds of sale on account pending further court order upon application of any interested
9 parties.

10 WHEREFORE, Trustee prays judgment as follows:

11 1. That an order be entered for sale of the subject property pursuant to the agreement
12 alleged herein, or otherwise;

13 | 2. That upon sale of the property, the proceeds of the sale, less the costs and
14 | expenses of such sale, be held on account by Trustee pending further court order; and

15 || 3. For such other relief as the court deems just and proper.

17 Dated: March 29, 2010.

KIMBLE, MacMICHAEL & UPTON
A Professional Corporation

By /s/ Christopher E. Seymour
CHRISTOPHER E. SEYMOUR
Attorneys for JAMES E. SALVEN

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